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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION

20 IN RE: YAHOO! INC. CUSTOMER DATA) No. 16-md-02752-LHK
21 SECURITY BREACH LITIGATION) **ADMINISTRATIVE MOTION TO FILE**
22) **PORTION OF PLAINTIFFS' MOTION**
23) **TO COMPEL UNDER SEAL**
24)
25)
26)
27)
28)

Pursuant to Civil L.R. 79-5 and the Protective Order entered in this case on March 17, 2017 (ECF No. 73), Plaintiffs Kimberly Heines, Hashmatullah Essar, Paul Dugas, Matthew Ridolfo, Deana Ridolfo, Yaniv Rivlin, Mali Granot, Brian Neff, and Andrew J. Mortensen, acting on behalf of themselves and all others similarly situated, hereby request this Court enter an Order allowing the filing of select portions of the Plaintiffs' Motion to Compel Discovery, identified fully below, under seal.

ARGUMENT

It is well established that the right of the public to inspect and copy court records and documents is not absolute. Courts have the authority to insure that "[Court] records are not 'used' . . . as sources of business information that might harm a litigant's competitive standing." *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 (1978). A party faced with the disclosure of confidential or proprietary information may seek to file the documents under seal to avoid this exposure. *See Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006).

Plaintiffs' Motion to Compel Discovery is not a dispositive motion and so the parties must satisfy a "good cause" standard for sealing documents. *See In re Midland Nat'l Life Ins. Co. Annuity Sales Practices Litig.*, 686 F.3d 1115, 1119 (9th Cir. 2012). In addition, under Civil L.R. 79-5(e), Plaintiffs here are identifying the material sought to be filed under seal as being designated as confidential by Defendants, who may then file a responsive declaration establishing that the material is sealable.

Here, Plaintiffs seek to have Exhibit 1 to Plaintiffs' Motion to Compel filed under seal. As required by Civil L.R. 79-5(d), Plaintiffs are attaching copies of both the proposed redacted Exhibit 1 to Plaintiffs' Motion to Compel Discovery and the unredacted version.

There is good cause for filing each of the above-referenced exhibits, paragraphs or portions of paragraphs under seal. The information and images reflected in those sections all come from documents or deposition testimony designated "Confidential" or "Highly Confidential – Attorneys' Eyes Only" by the Defendants in this case and are subject to the Protective Order entered by this Court. Many of the documents referenced in or used to obtain information for Exhibit 1 to Plaintiffs' Motion to Compel Discovery reflect Defendants' internal operating

1 procedures or sensitive data security measures and various ways in which third parties have
2 breached those security measures. This is a data breach case, and the technical information relating
3 to compromises of Defendants' systems should remain sealed. *See* Declaration of Daniel C.
4 Telstein in Support of Joint Administrative Motion to File Under Seal Certain Portions of
5 Defendants' Privilege Logs.

6 DATED: August 15, 2018

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8 s/ Kate M. Baxter-Kauf

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13 On behalf of Plaintiffs' Lead Counsel
14 and Executive Committee